



General Assembly

February Session, 2006

**Substitute Bill No. 5050**

\* \_\_\_\_\_ HB05050PD \_\_\_\_\_ 041106 \_\_\_\_\_ \*

**AN ACT CONCERNING THE STATE SET-ASIDE PROGRAM.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4a-60g of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective January 1, 2007*):

3 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,  
4 the following terms have the following meanings:

5 (1) "Small contractor" means any contractor, subcontractor,  
6 manufacturer or service company (A) [which] that has been doing  
7 business under the same ownership [and] or management and has  
8 maintained its principal place of business in the state, for a period of at  
9 least one year immediately prior to the date of application for  
10 certification under this section, (B) [which had gross revenues not  
11 exceeding ten million dollars in the most recently completed fiscal year  
12 prior to such application] that meets the size standard established by  
13 the Department of Administrative Services pursuant to section 2 of this  
14 act, for the business sector in which such contractor, subcontractor,  
15 manufacturer or service company primarily operates, and (C) at least  
16 fifty-one per cent of the ownership of which is held by a person or  
17 persons who exercise operational authority over the daily affairs of the  
18 business and have the power to direct the management and policies  
19 and receive the beneficial interests of the business, except that a  
20 nonprofit corporation shall be construed to be a small contractor if

21 such nonprofit corporation meets the requirements of subparagraphs  
22 (A) and (B) of this subdivision.

23 (2) "State agency" means each state board, commission, department,  
24 office, institution, council or other agency with the power to contract  
25 for goods or services itself or through its head.

26 (3) "Minority business enterprise" means any small contractor (A)  
27 fifty-one per cent or more of the capital stock, if any, or assets of which  
28 are owned by a person or persons (i) who exercise operational  
29 authority over the daily affairs of the enterprise, (ii) who have the  
30 power to direct the management and policies and receive the beneficial  
31 interest of the enterprise, and (iii) who are members of a minority, as  
32 such term is defined in subsection (a) of section 32-9n, (B) who is an  
33 individual with a disability, or (C) which is a nonprofit corporation in  
34 which fifty-one per cent or more of the persons who (i) exercise  
35 operational authority over the enterprise, and (ii) have the power to  
36 direct the management and policies of the enterprise are members of a  
37 minority, as defined in this subsection, or are individuals with a  
38 disability.

39 (4) "Affiliated" means the relationship in which a person directly, or  
40 indirectly through one or more intermediaries, controls, is controlled  
41 by or is under common control with another person.

42 (5) "Control" means the power to direct or cause the direction of the  
43 management and policies of any person, whether through the  
44 ownership of voting securities, by contract or through any other direct  
45 or indirect means. Control shall be presumed to exist if any person,  
46 directly or indirectly, owns, controls, holds with the power to vote, or  
47 holds proxies representing, twenty per cent or more of any voting  
48 securities of another person.

49 (6) "Person" means any individual, corporation, limited liability  
50 company, partnership, association, joint stock company, business trust,  
51 unincorporated organization or other entity.

52       (7) "Individual with a disability" means an individual (A) having a  
53 physical impairment that substantially limits one or more of the major  
54 life activities of the individual, or (B) having a record of such an  
55 impairment.

56       (8) "Nonprofit corporation" means a nonprofit corporation  
57 incorporated pursuant to chapter 602 or any predecessor statutes  
58 thereto.

59       (b) It is found and determined that there is a serious need to help  
60 small contractors, minority business enterprises, nonprofit  
61 organizations and individuals with disabilities to be considered for  
62 and awarded state contracts for the construction, reconstruction or  
63 rehabilitation of public buildings, the construction and maintenance of  
64 highways and the purchase of goods and services. Accordingly, the  
65 necessity, in the public interest and for the public benefit and good, of  
66 the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and  
67 sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative  
68 determination. Notwithstanding any provisions of the general statutes  
69 to the contrary, and except as set forth herein, the head of each state  
70 agency and each political subdivision of the state other than a  
71 municipality shall set aside in each fiscal year, for award to small  
72 contractors, on the basis of competitive bidding procedures, contracts  
73 or portions of contracts for the construction, reconstruction or  
74 rehabilitation of public buildings, the construction and maintenance of  
75 highways and the purchase of goods and services. Eligibility of  
76 nonprofit corporations under the provisions of this section shall be  
77 limited to predevelopment contracts awarded by the Commissioner of  
78 Economic and Community Development for housing projects. The  
79 total value of such contracts or portions thereof to be set aside by each  
80 such agency shall be at least twenty-five per cent of the total value of  
81 all contracts let by the head of such agency in each fiscal year,  
82 provided that neither: (1) A contract that may not be set aside due to a  
83 conflict with a federal law or regulation; or (2) a contract for any goods  
84 or services which have been determined by the Commissioner of  
85 Administrative Services to be not customarily available from or

86 supplied by small contractors shall be included. [ except that the head  
87 of any such agency may set aside an amount based on the amount of  
88 all contracts not excluded from the calculation which are anticipated to  
89 be let in any fiscal year if the method of calculation for such year  
90 would result in a maximum value of contracts to be set aside of less  
91 than twenty-five per cent of the contracts anticipated to be let in such  
92 year or in a minimum value of contracts to be set aside of greater than  
93 twenty-five per cent of the contracts anticipated to be let in such year.]  
94 Contracts or portions thereof having a value of not less than  
95 twenty-five per cent of the total value of all contracts or portions  
96 thereof to be set aside shall be reserved for awards to minority  
97 business enterprises.

98 (c) The head of any state agency or political subdivision of the state  
99 other than a municipality may, in lieu of setting aside any contract or  
100 portions thereof, require any general or trade contractor or any other  
101 entity authorized by such agency to award contracts, to set aside a  
102 portion of any contract for subcontractors who are eligible for set-aside  
103 contracts under this section. Nothing in this subsection shall be  
104 construed to diminish the total value of contracts which are required to  
105 be set aside by any state agency or political subdivision of the state  
106 other than a municipality pursuant to this section.

107 (d) The heads of all state agencies and of each political subdivision  
108 of the state other than a municipality shall notify the Commissioner of  
109 Administrative Services of all contracts to be set aside pursuant to  
110 subsection (b) or (c) of this section at the time that bid documents for  
111 such contracts are made available to potential contractors.

112 [(e) In no case shall the Commissioner of Administrative Services  
113 recommend, nor shall any small contractor be awarded, any such  
114 contract or contracts, the total amount of which exceeds ten million  
115 dollars in any one fiscal year.]

116 [(f)] (e) The awarding authority shall require that a contractor or  
117 subcontractor awarded a contract or a portion of a contract under this

118 section perform not less than fifteen per cent of the work with the  
119 workforces of such contractor or subcontractor and shall require that  
120 not less than twenty-five per cent of the work be performed by  
121 contractors or subcontractors eligible for awards under this section. A  
122 contractor awarded a contract or a portion of a contract under this  
123 section shall not subcontract with any person with whom the  
124 contractor is affiliated. No person who is affiliated with another person  
125 shall be eligible for awards under this section if both affiliated persons  
126 considered together would not qualify as a small contractor or a  
127 minority business enterprise under subsection (a) of this section. The  
128 awarding authority shall require that a contractor awarded a contract  
129 under this section submit, in writing, an explanation of any  
130 subcontract entered into with any person that is not eligible for awards  
131 under this section prior to the performance of any work pursuant to  
132 such subcontract. The awarding authority may impose a civil penalty  
133 on such contractor in accordance with the provisions of subsection (j)  
134 of this section.

135 [(g)] (f) The awarding authority may require that a contractor or  
136 subcontractor awarded a contract or a portion of a contract under this  
137 section furnish the following documentation: (1) A copy of the  
138 certificate of incorporation, certificate of limited partnership,  
139 partnership agreement or other organizational documents of the  
140 contractor or subcontractor; (2) a copy of federal income tax returns  
141 filed by the contractor or subcontractor for the previous year; and (3)  
142 evidence of payment of fair market value for the purchase or lease by  
143 the contractor or subcontractor of property or equipment from another  
144 contractor who is not eligible for set-aside contracts under this section.

145 [(h)] (g) The awarding authority or the Commissioner of  
146 Administrative Services or the Commission on Human Rights and  
147 Opportunities may conduct an audit of the financial, corporate and  
148 business records and conduct an investigation of any small contractor  
149 or minority business enterprise which applies for or is awarded a  
150 set-aside contract for the purpose of determining eligibility for awards  
151 or compliance with the requirements established under this section.

152        [(i)] (h) The provisions of this section shall not apply to any state  
153 agency or political subdivision of the state other than a municipality  
154 for which the total value of all contracts or portions of contracts of the  
155 types enumerated in subsection (b) of this section is anticipated to be  
156 equal to ten thousand dollars or less.

157        [(j)] (i) In lieu of a performance, bid, labor and materials or other  
158 required bond, a contractor or subcontractor awarded a contract under  
159 this section may provide to the awarding authority, and the awarding  
160 authority shall accept a letter of credit. Any such letter of credit shall  
161 be in an amount equal to ten per cent of the contract for any contract  
162 that is less than one hundred thousand dollars and in an amount equal  
163 to twenty-five per cent of the contract for any contract that exceeds one  
164 hundred thousand dollars.

165        [(k)] (j) (1) Whenever the awarding agency has reason to believe that  
166 any contractor or subcontractor awarded a set-aside contract has  
167 wilfully violated any provision of this section, the awarding agency  
168 [may] shall send a notice to such contractor or subcontractor by  
169 certified mail, return receipt requested. Such notice shall include: (A) A  
170 reference to the provision alleged to be violated; (B) a short and plain  
171 statement of the matter asserted; (C) the maximum civil penalty that  
172 may be imposed for such violation; and (D) the time and place for the  
173 hearing. Such hearing shall be fixed for a date not earlier than fourteen  
174 days after the notice is mailed. The awarding authority shall send a  
175 copy of such notice to the Commission on Human Rights and  
176 Opportunities.

177        (2) The awarding agency shall hold a hearing on the violation  
178 asserted unless such contractor or subcontractor fails to appear. The  
179 hearing shall be held in accordance with the provisions of chapter 54.  
180 If, after the hearing, the awarding agency finds that the contractor or  
181 subcontractor has wilfully violated any provision of this section, the  
182 awarding agency shall suspend all set-aside contract payments to the  
183 contractor or subcontractor and may, in its discretion, order that a civil  
184 penalty not exceeding ten thousand dollars per violation be imposed

185 on the contractor or subcontractor. If such contractor or subcontractor  
186 fails to appear for the hearing, the awarding agency may, as the facts  
187 require, order that a civil penalty not exceeding ten thousand dollars  
188 per violation be imposed on the contractor or subcontractor. The  
189 awarding agency shall send a copy of any order issued pursuant to  
190 this subsection by certified mail, return receipt requested, to the  
191 contractor or subcontractor named in such order. The awarding agency  
192 may cause proceedings to be instituted by the Attorney General for the  
193 enforcement of any order imposing a civil penalty issued under this  
194 subsection.

195 [(l)] (k) On or before January 1, 2000, the Commissioner of  
196 Administrative Services shall establish a process for certification of  
197 small contractors and minority business enterprises as eligible for  
198 set-aside contracts. Each certification shall be valid for a period not to  
199 exceed two years. [The] Any paper application for certification shall be  
200 no longer than six pages. [Annually, the commissioner shall print a]  
201 The Department of Administrative Services shall maintain on its web  
202 site an updated directory of small contractors and minority business  
203 enterprises certified under this section. [State agencies shall be  
204 provided with updated directory information quarterly.]

205 [(m)] (l) On or before September 30, 1995, and annually thereafter,  
206 each state agency and each political subdivision of the state other than  
207 a municipality setting aside contracts or portions of contracts shall  
208 prepare a report establishing small and minority business set-aside  
209 program goals for the twelve-month period beginning July first in the  
210 same year. Each such report shall be submitted to the Commissioner of  
211 Administrative Services, the Commission on Human Rights and  
212 Opportunities and the cochairpersons and ranking members of the  
213 joint standing committees of the General Assembly having cognizance  
214 of matters relating to planning and development and government  
215 administration and elections.

216 [(n)] (m) On or before November 1, 1995, and quarterly thereafter,  
217 each state agency and each political subdivision of the state other than

218 a municipality setting aside contracts or portions of contracts shall  
219 prepare a status report on the implementation and results of its small  
220 business and minority business enterprise set-aside program goals  
221 during the three-month period ending one month before the due date  
222 for the report. Each report shall be submitted to the Commissioner of  
223 Administrative Services and the Commission on Human Rights and  
224 Opportunities. Any state agency or political subdivision of the state,  
225 other than a municipality, that does not achieve at least seventy-five  
226 per cent of its small contractor and minority business enterprise set-  
227 aside program goals by the end of the third reporting period in any  
228 twelve-month period beginning on July first shall provide a written  
229 explanation to the Commissioner of Administrative Services and the  
230 Commission on Human Rights and Opportunities detailing how the  
231 agency or political subdivision will achieve its goals in the final  
232 reporting period. The Commission on Human Rights and  
233 Opportunities shall: (1) Monitor the achievement of the annual goals  
234 established by each state agency and political subdivision of the state  
235 other than a municipality; and (2) prepare a quarterly report  
236 concerning such goal achievement. The report shall be submitted to  
237 each state agency that submitted a report, the Commissioner of  
238 Economic and Community Development, the Commissioner of  
239 Administrative Services and the cochairpersons and ranking members  
240 of the joint standing committees of the General Assembly having  
241 cognizance of matters relating to planning and development and  
242 government administration and elections. Failure by any state agency  
243 or political subdivision of the state other than a municipality to submit  
244 any reports required by this section shall be a violation of section 46a-  
245 77.

246 [(o)] (n) On or before January 1, 2000, and annually thereafter, the  
247 Department of Administrative Services shall establish a precertification  
248 list of small contractors and minority business enterprises who have  
249 established a principal place of business in the state but have not  
250 maintained such place of business for one year and are not in the  
251 directory prepared pursuant to subsection [(l)] (k) of this section. An



252 awarding agency may select a small contractor or minority business  
253 enterprise from such precertification list only after such awarding  
254 agency makes a good faith effort to find an eligible small contractor or  
255 minority business enterprise in the directory and determines that no  
256 small contractor or minority business enterprise is qualified to perform  
257 the work required under the contract.

258       Sec. 2. (NEW) (*Effective from passage*) The Commissioner of  
259 Administrative Services shall adopt regulations, in accordance with  
260 chapter 54 of the general statutes, that establish size standards for  
261 small contractors in each business sector in which such contractors,  
262 subcontractors, manufactures or service companies primarily operate.  
263 Such regulations shall also provide for the inclusion of businesses with  
264 a maximum of twenty-five employees and gross sales of not more than  
265 two million dollars per year within the size standards established for  
266 small contractors in each such business sector.

267       Sec. 3. Subsection (b) of section 4a-60h of the general statutes is  
268 repealed and the following is substituted in lieu thereof (*Effective*  
269 *January 1, 2007*):

270       (b) The commissioner shall adopt regulations in accordance with the  
271 provisions of chapter 54 to carry out the purposes of sections 4a-60g to  
272 4a-60j, inclusive. Such regulations shall include (1) provisions  
273 concerning the application of the program to individuals with a  
274 disability; (2) guidelines for a legally acceptable format for, and content  
275 of, letters of credit authorized under subsection [(j)] (i) of section 4a-  
276 60g, as amended by this act; (3) procedures for random site visits to the  
277 place of business of an applicant for certification at the time of  
278 application and at subsequent times, as necessary, to ensure the  
279 integrity of the application process; and (4) time limits for approval or  
280 disapproval of applications.

281       Sec. 4. Section 4a-100 of the general statutes is repealed and the  
282 following is substituted in lieu thereof (*Effective January 1, 2007*):

283       (a) As used in this section: (1) "Prequalification" means

284 prequalification issued by the Commissioner of Administrative  
 285 Services to bid on a contract for the construction, reconstruction,  
 286 alteration, remodeling, repair or demolition of any public building for  
 287 work by the state or a municipality or to perform work under such a  
 288 contract as a substantial subcontractor; (2) "subcontractor" means a  
 289 person who performs work with a value in excess of twenty-five  
 290 thousand dollars for a contractor pursuant to a contract for work for  
 291 the state or a municipality which is estimated to cost more than five  
 292 hundred thousand dollars; (3) "principals and key personnel" includes  
 293 officers, directors, shareholders, members, partners and managerial  
 294 employees; (4) "aggregate work capacity rating" means the maximum  
 295 amount of work an applicant is capable of undertaking for any and all  
 296 projects; [and] (5) "single project limit" means the highest estimated  
 297 cost of a single project that an applicant is capable of undertaking; and  
 298 (6) "substantial subcontractor" means a person who performs work  
 299 with a value in excess of five hundred thousand dollars for a  
 300 contractor pursuant to a contract for work for the state or a  
 301 municipality which is estimated to cost more than five hundred  
 302 thousand dollars.

303 (b) (1) Any person may apply for prequalification to the Department  
 304 of Administrative Services. Such application shall be made on such  
 305 form as the Commissioner of Administrative Services prescribes and  
 306 shall be accompanied by a nonrefundable application fee as set forth in  
 307 subdivision (2) of this subsection. The application shall be signed  
 308 under penalty of false statement.

309 (2) The application fee shall be as follows:

T1	Aggregate Work Capacity Rating	Fee
T2	\$5,000,000.00 or less	\$600.00
T3	\$5,000,000.01 - \$8,000,000.00	\$750.00
T4	\$8,000,000.01 - \$10,000,000.00	\$850.00
T5	\$10,000,000.01 - \$15,000,000.00	\$1,000.00
T6	\$15,000,000.01 - \$20,000,000.00	\$1,500.00

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T7	\$20,000,000.01 - \$40,000,000.00	\$2,000.00
T8	\$40,000,000.01 or more	\$2,500.00

310 (c) The application form shall, at a minimum, require the applicant  
311 to supply information concerning:

312 (1) The applicant's form of organization;

313 (2) The applicant's principals and key personnel and any names  
314 under which the applicant, principals or key personnel conducted  
315 business during the past five years;

316 [(3) The applicant's experience on public and private construction  
317 projects over the past five years, or on the applicant's ten most  
318 recently-completed projects and the names of any subcontractors used  
319 on the projects;]

320 [(4)] (3) Any legal or administrative proceedings pending or  
321 concluded adversely against the applicant or any of the applicant's  
322 principals or key personnel within the past five years which relate to  
323 the procurement or performance of any public or private construction  
324 contract and whether the applicant is aware of any investigation  
325 pending against the applicant or any principal or key personnel;

326 [(5)] (4) The nature of any financial, personal or familial relationship  
327 between the applicant and any public or private construction project  
328 owner listed on the application as constituting construction experience;

329 [(6)] (5) A statement of whether (A) the applicant has been  
330 disqualified pursuant to section 4b-95, this section or section 31-57c or  
331 31-57d, (B) the applicant is on the list distributed by the Labor  
332 Commissioner pursuant to section 31-57a, (C) the applicant is  
333 disqualified or prohibited from being awarded a contract pursuant to  
334 section 31-57b, (D) the applicant has been disqualified by another state,  
335 (E) the applicant has been disqualified by a federal agency or pursuant  
336 to federal law, (F) the applicant's registration has been suspended or  
337 revoked by the Department of Consumer Protection pursuant to

338 section 20-341gg, (G) the applicant has been disqualified by a  
339 municipality, and (H) the matters that gave rise to any such  
340 disqualification, suspension or revocation have been eliminated or  
341 remedied; and

342     [(7)] (6) Other information as the commissioner deems relevant to  
343 the determination of the applicant's qualifications and responsibilities.

344     (d) The applicant shall include a statement of financial condition  
345 prepared by a certified public accountant which includes information  
346 concerning the applicant's assets and liabilities, plant and equipment,  
347 bank and credit references, bonding company and maximum bonding  
348 capacity, and other information as the commissioner deems relevant to  
349 an evaluation of the applicant's financial capacity and responsibility.

350     (e) Information contained in the application shall be current as of  
351 the time of filing except that the statement of financial condition shall  
352 pertain to the applicant's most recently-completed fiscal year.

353     (f) The commissioner shall determine whether to prequalify an  
354 applicant on the basis of the application and on relevant past  
355 performance according to procedures and criteria set forth in  
356 regulations which the commissioner shall adopt on or before October  
357 1, 2005, in accordance with chapter 54. Such criteria shall include, at a  
358 minimum, the record of the applicant's performance, including, but  
359 not limited to, written evaluations of the applicant's performance on  
360 public or private projects, [within the past five years,] for a period of  
361 not less than the past three years, the applicant's past experience on  
362 projects of various size and type, the skill, ability and integrity of the  
363 applicant and any subcontractors used by the applicant, the experience  
364 and qualifications of supervisory personnel employed by the  
365 applicant, the maximum amount of work the applicant is capable of  
366 undertaking as demonstrated by the applicant's financial condition,  
367 bonding capacity, size of past projects and present and anticipated  
368 work commitments, and any other relevant criteria that the  
369 commissioner prescribes. Such regulations shall also (1) provide that

370 the criteria considered shall be assigned separate designated numerical  
371 values and weights and that the applicant shall be assigned an overall  
372 numerical rating on the basis of all criteria, and (2) establish  
373 prequalification classifications, aggregate work capacity ratings and  
374 single project limits. Such prequalification classifications shall be used  
375 to establish the types of work a contractor or substantial subcontractor  
376 is qualified to perform and the aggregate work capacity ratings shall  
377 be used to establish the maximum amount of work a contractor or  
378 substantial subcontractor is capable of undertaking.

379 (g) (1) The applicant shall indicate the prequalification  
380 classifications, aggregate work capacity ratings and single project  
381 limits that are sought. The commissioner may issue a certificate of  
382 prequalification to any applicant who meets the requirements of this  
383 section. Such certificate shall be effective for one year from the date  
384 issued and shall indicate the contractor's or substantial subcontractor's  
385 prequalification classifications, aggregate work capacity ratings and  
386 single project limits. The commissioner may cause the initial certificate  
387 of prequalification to be effective for a period not to exceed two years  
388 and may require the applicant to remit payment of the application fee,  
389 as set forth in subsection (b) of this section, for the first twelve months  
390 of certification as well as a prorated application fee, as described in  
391 subdivision (3) of this subsection, for any additional period of  
392 certification beyond the first twelve months.

393 (2) A prequalified contractor or substantial subcontractor may apply  
394 at any time for additional prequalification classifications, aggregate  
395 work capacity ratings or single project limits by submitting the  
396 applicable increase in fee, a completed update statement, and other  
397 information the commissioner requires.

398 (3) The commissioner may renew a prequalification certificate upon  
399 receipt of a completed update statement, any other material the  
400 commissioner requires and a nonrefundable fee in an amount [equal  
401 to] not less than one-half of the application fee for the applicable  
402 aggregate work capacity rating as set forth in subsection (b) of this

403 section. [, except that in no event shall such fee be less than six  
404 hundred dollars.]

405 (h) Not later than sixty days after receiving a completed application,  
406 the commissioner shall mail or send by electronic mail a notice to the  
407 applicant concerning the commissioner's preliminary determination  
408 regarding the conditions of the prequalification certification, a denial  
409 of certification, a reduction in the level of certification sought or  
410 nonrenewal of certification. Any applicant aggrieved by the  
411 commissioner's preliminary determination may request copies of the  
412 information upon which the commissioner relied in making the  
413 preliminary determination, provided such request is made not later  
414 than ten days after the date the notice was mailed or sent by electronic  
415 mail to the applicant. Not later than twenty days after the date the  
416 notice was mailed or sent by electronic mail, the applicant may submit  
417 additional information to the commissioner with a request for  
418 reconsideration. The commissioner shall issue a final determination  
419 regarding the application not later than ninety days after the date the  
420 commissioner mailed or sent by electronic mail the notice of the  
421 preliminary determination, which ninety-day period may be extended  
422 for an additional period not to exceed ninety days if (1) the  
423 commissioner gives written notice to the applicant that the  
424 commissioner requires additional time, and (2) such notice is mailed or  
425 sent by electronic mail during the initial ninety-day period.

426 (i) The commissioner may not issue a prequalification certificate to  
427 any contractor or substantial subcontractor (1) who is disqualified  
428 pursuant to section 31-57c or 31-57d, (2) who has a principal or key  
429 personnel who, within the past five years, has a conviction or has  
430 entered a plea of guilty or nolo contendere for or has admitted to  
431 commission of an act or omission that reasonably could have resulted  
432 in disqualification pursuant to any provision of subdivisions (1) to (3),  
433 inclusive, of subsection (d) of section 31-57c or subdivisions (1) to (3),  
434 inclusive, of subsection (d) of section 31-57d, as determined by the  
435 commissioner.

436 (j) The commissioner may revoke a contractor's or substantial  
437 subcontractor's prequalification or reduce the contractor's or  
438 substantial subcontractor's prequalification classification or aggregate  
439 work capacity ratings, after an opportunity for a hearing, if the  
440 commissioner receives additional information that supports such  
441 revocation or reduction.

442 (k) (1) Any materially false statement in the application or any  
443 update statement may, in the discretion of the awarding authority,  
444 result in termination of any contract awarded the applicant by the  
445 awarding authority. The awarding authority shall provide written  
446 notice to the commissioner of such false statement not later than thirty  
447 days after discovering such false statement. The commissioner shall  
448 provide written notice of such false statement to the Commissioner of  
449 Public Works and the Commissioner of Consumer Protection not later  
450 than thirty days after discovering such false statement or receiving  
451 such notice.

452 (2) The commissioner shall revoke the prequalification of any  
453 person, after an opportunity for hearing, if the commissioner finds that  
454 the person has included any materially false statement in such  
455 application or update statement, has been convicted of a crime related  
456 to the procurement or performance of any public or private  
457 construction contract or, within the past five years or has otherwise  
458 engaged in fraud in obtaining or maintaining prequalification. Any  
459 person whose prequalification has been revoked pursuant to this  
460 subsection shall be disqualified for a period of two years after which  
461 the person may reapply for prequalification, except that a person  
462 whose prequalification has been revoked on the basis of conviction of a  
463 crime or engaging in fraud shall be disqualified for a period of five  
464 years after which the person may reapply for prequalification. The  
465 commissioner shall not prequalify a person whose prequalification has  
466 been revoked pursuant to this subdivision until the expiration of said  
467 [two or] two-year, five-year, or other applicable disqualification period  
468 and the commissioner is satisfied that the matters that gave rise to the  
469 revocation have been eliminated or remedied.

470 (l) The commissioner shall provide written notice of any revocation,  
471 disqualification, reduction in classification or capacity rating or  
472 reinstated prequalification to the Commissioner of Public Works and  
473 the Commissioner of Consumer Protection not later than thirty days  
474 after any final determination.

475 (m) The provisions of this section and section 4a-101, as amended by  
476 this act, shall not apply to subcontractors who are not substantial  
477 subcontractors.

478 (n) The commissioner shall establish an update statement for use by  
479 bidders and substantial subcontractors for purposes of renewing or  
480 upgrading a prequalification certificate and for purposes of submitting  
481 a bid pursuant to section 4b-91, as amended by this act.

482 (o) Any applicant aggrieved by the commissioner's final  
483 determination concerning a preliminary determination, a denial of  
484 certification, a reduction in prequalification classification or aggregate  
485 work capacity rating or a revocation or nonrenewal of certification  
486 may appeal to the Superior Court in accordance with section 4-183.

487 (p) The commissioner shall adopt regulations, in accordance with  
488 chapter 54, to establish a schedule of application fees for substantial  
489 subcontractors.

490 Sec. 5. Section 4a-101 of the general statutes is repealed and the  
491 following is substituted in lieu thereof (*Effective January 1, 2007*):

492 (a) On or before October 1, 2005, the Commissioner of  
493 Administrative Services shall adopt regulations, in accordance with  
494 chapter 54, to establish a standard contractor evaluation form. Such  
495 form shall include, at a minimum, the following evaluation criteria: (1)  
496 Timeliness of performance; (2) quality of performance; (3) cost  
497 containment, including, but not limited to, the contractor's ability to  
498 work within the contract's allotted cost, the accuracy of the contractor's  
499 billing, and the number and cause of change orders and the manner in  
500 which the contractor determined the price on the change orders; (4)



501 safety; (5) the quality of the contractor's working relationship with the  
502 agency and the quality of the contractor's supervision of the work area;  
503 (6) communication with the agency; (7) the quality of the contractor's  
504 required documentation; (8) the performance of the contractor's  
505 subcontractors and substantial subcontractors, to the extent known by  
506 the official who completes the evaluation; and (9) the contractor's and  
507 any subcontractor's compliance with part III of chapter 557, or chapter  
508 558, or the provisions of the federal Davis-Bacon Act, 40 USC, Sections  
509 276a to 276a-5, inclusive, as from time to time amended, to the extent  
510 known by the official who completes the evaluation.

511 (b) Each public agency shall compile evaluation information during  
512 the performance of the contract and complete and submit the  
513 evaluation form to the commissioner after completion of a building  
514 project under the agency's control if the building project is funded, in  
515 whole or in part, by state funds. Such evaluation information shall be  
516 available to any public agency for purposes of assessing the  
517 responsibility of the contractor during a bid selection and evaluation  
518 process. The designated official from such agency shall certify that the  
519 information contained in the evaluation form represents, to the best of  
520 the certifying official's knowledge, a true and accurate analysis of the  
521 contractor's performance record on the contract. The commissioner  
522 shall include the evaluation in the contractor's prequalification file. The  
523 official shall mail a copy of the completed evaluation form to the  
524 contractor. Any contractor who wishes to contest any information  
525 contained in the evaluation form may submit a written response to the  
526 commissioner not later than thirty days after the date the form was  
527 mailed as indicated by the postmark on the envelope. Such response  
528 shall set forth any additional information concerning the building  
529 project or the oversight of the contract by the public agency that may  
530 be relevant in the evaluation of the contractor's performance on the  
531 project. The commissioner shall include any such response in the  
532 contractor's prequalification file.

533 (c) As used in this section, "public agency" means a public agency,  
534 as defined in section 1-200, but does not include The University of

535 Connecticut with respect to any project, as defined in subdivision (16)  
536 of section 10a-109c, that is undertaken and controlled by the  
537 university, [and] "subcontractor" means a person who performs work  
538 with a value in excess of twenty-five thousand dollars for a contractor  
539 pursuant to a contract for work for the state or a municipality which is  
540 estimated to cost more than five hundred thousand dollars and  
541 "substantial subcontractor" means a substantial subcontractor, as  
542 defined in section 4a-100, as amended by this act.

543 (d) Upon fifty per cent completion of any building project under a  
544 public agency's control, the agency shall advise the contractor in  
545 writing of the agency's preliminary evaluation of the contractor's  
546 performance on the project.

547 (e) No public agency, employee of a public agency or certifying  
548 official of a public agency shall be held liable to any contractor for any  
549 loss or injury sustained by such contractor as the result of the  
550 completion of an evaluation form, as required by this section, unless  
551 such agency, employee or official is found by a court of competent  
552 jurisdiction to have acted in a wilful, wanton or reckless manner.

553 (f) Any public agency that fails to submit a completed evaluation  
554 form, as required by this section, not later than seventy days after the  
555 completion of a project, shall be ineligible for the receipt of any public  
556 funds disbursed by the state for the purposes of the construction,  
557 reconstruction, alteration, remodeling, repair or demolition of any  
558 public building or any public works project until such completed  
559 evaluation form is submitted.

560 (g) Notwithstanding the provisions of subsection (a) of this section,  
561 any political subdivision of the state, when evaluating the performance  
562 of a contractor's subcontractors or substantial subcontractors, to the  
563 extent known, may rely on an evaluation of such subcontractors or  
564 substantial subcontractors that is conducted by the contractor.

565 Sec. 6. Section 4b-91 of the 2006 supplement to the general statutes is  
566 amended by adding subsection (j) as follows (*Effective January 1, 2007*):

567 (NEW) (j) On and after January 1, 2007, no person whose  
568 subcontract exceeds five hundred thousand dollars in value may  
569 perform work as a subcontractor on a project for the construction,  
570 reconstruction, alteration, remodeling, repair or demolition of any  
571 public building for work by the state or a municipality, which project  
572 is estimated to cost more than five hundred thousand dollars and is  
573 paid for, in whole or in part, with state funds, unless the person is  
574 prequalified in accordance with section 4a-100, as amended by this act.  
575 The provisions of this subsection shall not apply to a project described  
576 in subdivision (2) of subsection (a) of this section.

577 Sec. 7. (NEW) (*Effective January 1, 2007*) (a) This section shall be  
578 known as the "Anthony J. Tercyak Act".

579 (b) The Department of Administrative Services shall require any  
580 publicly traded corporation that seeks to do business with the state to  
581 certify in an affidavit that such company is not a company that: (1)  
582 Conducted business in the United States, (2) was previously  
583 incorporated within the United States' territorial limits, (3)  
584 reincorporated outside the United States' territorial limits on or after  
585 July 1, 2005, and (4) as a result of such reincorporation outside the  
586 United States' territorial limits, has received a reduction in federal or  
587 Connecticut tax liability.

588 (c) The state may not enter into any contract with any publicly  
589 traded company that does not deny such reincorporation in a sworn  
590 affidavit, except that the Attorney General may waive such prohibition  
591 if the services sought by the state are not available from a company  
592 that is incorporated in the United States or if waiver of such  
593 prohibition is in the best interest of the state.

594 Sec. 8. Subsection (d) of section 4b-91 of the 2006 supplement to the  
595 general statutes is repealed and the following is substituted in lieu  
596 thereof (*Effective from passage*):

597 (d) On and after October 1, 2004, each bid submitted for a contract  
598 described in subsection (c) of this section shall include a copy of a

599 prequalification certificate issued by the Commissioner of  
 600 Administrative Services. The bid shall also be accompanied by an  
 601 update statement in such form as the Commissioner of Administrative  
 602 Services prescribes. The form for such update statement shall provide  
 603 space for information regarding all bonded projects completed by the  
 604 bidder since the date the bidder's prequalification certificate was  
 605 issued or renewed, all bonded projects the bidder currently has under  
 606 contract, including the percentage of work on such projects not  
 607 completed, the names and qualifications of the personnel who will  
 608 have supervisory responsibility for the performance of the contract,  
 609 any significant changes in the bidder's financial position or corporate  
 610 structure since the date the certificate was issued or renewed, any  
 611 change in the contractor's qualification status as determined by the  
 612 provisions of subdivision (6) of subsection (c) of section 4a-100 and  
 613 such other relevant information as the Commissioner of  
 614 Administrative Services prescribes. Any bid submitted without a copy  
 615 of the prequalification certificate and an update statement shall be  
 616 invalid. Any public agency that accepts a bid submitted without a  
 617 copy of such prequalification certificate and an update statement, as  
 618 required by this section, shall be ineligible for the receipt of any state  
 619 funds disbursed for the purpose of the construction, reconstruction,  
 620 alteration, remodeling, repair or demolition of any public building or  
 621 any public works project.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>January 1, 2007</i>	4a-60g
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>January 1, 2007</i>	4a-60h(b)
Sec. 4	<i>January 1, 2007</i>	4a-100
Sec. 5	<i>January 1, 2007</i>	4a-101
Sec. 6	<i>January 1, 2007</i>	4b-91
Sec. 7	<i>January 1, 2007</i>	New section
Sec. 8	<i>from passage</i>	4b-91(d)

***GAE***      *Joint Favorable Subst.*

***PD***        *Joint Favorable*